

**Return Date: July 15, 2008
10:00 A.M.**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

X

In Re:

Case No. 08-11546-JMP

Chapter 7

SAUNDRA PLUMERI,

**NOTICE OF MOTION
TO VACATE THE
AUTOMATIC STAY**

Debtor.

X

PLEASE TAKE NOTICE, that upon the annexed application of **64TH STREET-THIRD AVENUE ASSOCIATES LLC**, by their attorneys, ***Sperber Denenberg & Kahan, P.C.***, a hearing will be held before the **Honorable James M. Peck**, Bankruptcy Judge, at the **United States Bankruptcy Court, The Old Customs House, One Bowling Green, New York, New York, Room 601 on the 15th day of July 2008, at 10:00 a.m.**, or soon thereafter as counsel can be heard to consider the motion of **64TH STREET-THIRD AVENUE ASSOCIATES LLC** for an order:

- a. Granting **64TH STREET-THIRD AVENUE ASSOCIATES LLC** relief from the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) to permit it to pursue its statutory remedies with respect to property located 200 East 64th Street, Apt. 9C, New York, New York 10065;
and
- b. Granting Movant such further and different relief as is just and proper.

Dated: New York, New York
June 17, 2008

Yours, etc.

SPERBER DENENBERG & KAHAN, P.C.

By: Jacqueline Handel-Harbour, Esq.
Attorneys for Movant - 64th Street-Third Avenue
Associates LLC
48 West 37th Street, 16th Floor
New York, New York 10018
(917) 351-1335

TO: SEE SERVICE LIST

SERVICE LIST

OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street
New York, New York 10004

ELLIOTT SPITZER, ATTORNEY GENERAL
120 Broadway
New York, New York 10271

SAUNDRA PLUMERI
Debtor
200 East 64th Street, Apt. #9C
New York, New York 10065

SHENWICK & ASSOCIATES
Attn: James H. Shenwick, Esq.
Attorney for Debtor
655 Third Avenue, 20th Floor
New York, New York 10017
(212) 541-6224

GAZES LLC
Attn: Ian J. Gazes, Esq.
Bankruptcy Trustee
32 Avenue of the Americas, 27th Floor
New York, New York 10013
(212) 765-9000

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

X

Case No. 08-11546-JMP

In Re:

Chapter 7

SAUNDRA PLUMERI,

APPLICATION

Debtor.

X

TO: THE HON. JAMES M. PECK, BANKRUPTCY COURT JUDGE

The application of 64TH STREET-THIRD AVENUE ASSOCIATES LLC, by their attorneys,
Sperber Denenberg & Kahan, P.C., respectfully represents as follows:

1. On or about April 28, 2008, Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code.

PROCEDURAL AND FACTUAL BACKGROUND

2. Debtor is the lessee of the residential premises located at 200 East 64th Street, Apt. 9C, New York, New York 10065 (*the "Premises"*).

3. Debtor refused to tender rent that which was due, which caused the Movant to commence a summary nonpayment proceeding in Housing Court against her and her husband. (*A copy of the petition is hereto annexed as Exhibit "A."*) In response to the petition, a judgment and warrant was issued against Thomas Plumeri, however since debtor filed this proceeding, a stay was issued from proceeding against Debtor.

4. The warrant has issued on June 12, 2008 against Thomas Plumeri who has since failed to tender the judgment amount.

5. Since filing for Bankruptcy, *Debtor or her husband, judgment debtor has paid no post-petition rent* despite retaining possession of Movant's property, and therefore Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

6. In addition, this motion seeks relief from the automatic stay pursuant to §362(d)(2), so as to permit Movant to exercise its statutory remedies relating to the Premises.

ARGUMENT

7. Title 11 of the United States Code §362(d) provides in relevant part:

On request of a party in interest and after notice and a hearing, the **court shall grant relief from the stay** provided . . .

1. **for cause**, including the **lack of adequate protection** of an interest in property of such party interest;

2. with respect to a stay of an act against property under subsection (a) of this section, if:

(A) the Debtor **does not have equity** in such property; and

(B) such **property is not necessary** to an effective reorganization. *{Emphasis added}*

**DEBTOR CANNOT SHOW
MOVANT'S INTEREST IS ADEQUATELY PROTECTED**

8. Movant is entitled to relief from the automatic stay pursuant to Section 362(d)(1) of the U.S. Bankruptcy Code in that Debtor cannot show Movant's interest in the property is adequately protected.

9. The Bankruptcy Court of the Southern District has stated, “[W]here the plaintiff seeks to lift the automatic stay pursuant to 11 U.S.C. 362(d)(1) for cause including the lack of adequate protection of the plaintiff’s interest in the collateral in question, the Debtor must prove facts sufficient to deny the plaintiff’s request for relief.” ***In Re: Domestic Fuel Corp.***, 70 B.R. 455, 463 (Bankr. S.D.N.Y. 1987); *See, 11 U.S.C. Section 362(g)*.

10. By her own actions thus far, it is clear Debtor will not be able to satisfy her burden of proof here. Debtor has been in default of the payment of rent continuously over the last few years as illustrated by the within proceeding and prior proceeding. (***See Exhibit “B.”***)

11. As of the Bankruptcy filing date of April 28, 2008, Debtor owed approximately \$8,123.46 in pre-petition rent¹. Since then, the debt has INCREASED to approximately \$13,836.64 in rent with the addition of post-petition arrears totaling approximately \$5,713.18 (through June 30, 2008) (*2 days in April, May and June 2008 @ \$2,764.44 per month*).

12. It is respectfully submitted that based on Debtor’s failure thus far to make regular monthly payments to Movant, the significant amount of rental arrears due, and the high monthly rent which seems impractical at best, and certainly unlikely to be paid by Debtor under her current financial situation, Movant is not being provided adequate protection as required by 11 U.S.C. §362(d)(1), and is entitled to relief from the automatic stay for cause.

CONCLUSION

15. No prior application has been made for the relief requested herein.

1

All amounts of pre-petition rental arrears are calculated on a pro-rata basis, (\$92.15 per day and the monthly use and occupancy is \$2,764.44).

WHEREFORE, it is respectfully requested that the present motion be granted and the automatic stay vacated, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 19, 2008

Yours, etc.

SPERBER DENENBERG & KAHAN, P.C.

By: Jacqueline Handel-Harbour, Esq.
Attorneys for Movant - 64th Street-Third Avenue
Associates LLC
48 West 37th Street, 16th Floor
New York, New York 10018
(917) 351-1335

TO: SEE SERVICE LIST

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

X

Case No. 08-11546-JMP

In Re:

Chapter 7

SAUNDRA PLUMERI,

AFFIDAVIT

Debtor.

X

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

MICHAEL DIMSON, being duly sworn, hereby deposes and says as follows:

1. I am a member of ***64th Street-Third Avenue Associates, LLC***, **Movant** and landlord of the building which Debtor is a tenant within and, as such, I am fully familiar with the facts set forth herein.

2. I submit this affidavit in support to Movant's application to vacate the automatic stay issued upon Debtor filing the underlying Chapter 7 Bankruptcy Petition.

3. Through June 2008, Debtor owes Movant \$13,836.64; \$8,123.46 in pre-petition and \$5,713.18 in post-petition rent, excluding legal fees awarded in a State summary nonpayment proceeding. Her monthly rent is \$2,764.44.

4. The Movant therefore requests that the automatic stay issued under the Bankruptcy Code be lifted in order to be able to proceed in due course with a State Court summary nonpayment proceeding. Previously a summary nonpayment was commenced against both Debtor and her husband Thomas Plumeri. Mrs. Plumeri, debtor in an attempt to dealey eviction filed this Petition. However a judgment and warrant was issued against her husband in said case. It is requested that we be able to proceed against her as well.

MICHAEL DIMSON

Sworn to before me this
day of **June 2008**.

**NOTARY PUBLIC
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____ X

Case No. 08-11546-JMP

In Re:

Chapter 7

SAUNDRA PLUMERI,

ORDER

Debtor.

_____ X

UPON the application of 64TH STREET-THIRD AVENUE ASSOCIATES LLC., by their attorneys, *Sperber Denenberg & Kahan, P.C.*, seeking an order pursuant to 11 U.S.C. §362(d)(1) for relief from the automatic stay for cause, and good cause appearing therefore; it is hereby

ORDERED, that said motion being duly heard on **July 15, 2008**, is granted and the automatic stay is hereby vacated as it pertains to **200 East 64th Street, Apt. 9C, New York, New York 10065**; and

IT IS FURTHER ORDERED, that 64TH STREET-THIRD AVENUE ASSOCIATES LLC may continue prosecution of the summary nonpayment proceedings against Debtor in the New York City Civil Court, County of New York, (*including, but not limited to, Index No. L&T 85327/07*).

Dated: New York, New York
_____, 2008

“SO-ORDERED”

HON. JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

BEATRIZ CRUZ, being duly sworn, deposes and says:

1. Deponent is not a party to the action, is over 18 years of age and is employed by **Sperber Denenberg & Kahan, P.C., 48 West 37th Street, 16th Floor, New York, New York 10018.**

2. On **June _____, 2008**, deponent served a true copy of **Notice of Motion to Vacate the Automatic Stay** upon the party(ies) whose name(s) and address(es) is(are) listed below as follows:

OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street
New York, New York 10004

ELLIOTT SPITZER, ATTORNEY GENERAL
120 Broadway
New York, New York 10271

SAUNDRA PLUMERI
Debtor
200 East 64th Street, Apt. 9C
New York, New York 10065

SHENWICK & ASSOCIATES
Attn: James H. Shenwick, Esq.
Attorney for Debtor
655 Third Avenue, 20th Floor
New York, New York 10017

GAZES LLC
Attn: Ian J. Gazes, Esq.
Bankruptcy Trustee
32 Avenue of the Americas, 27th Floor
New York, New York 10013

via ***Regular First Class Mail*** by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within New York State.

BEATRIZ CRUZ

Sworn to before me this
_____ *day of **June 2008**.*

NOTARY PUBLIC

JACQUELINE HANDEL-HARBOUR
NOTARY PUBLIC, State of New York

No. 02-HA5033367

Qualified in Queens County
Commission Expires September 19, 2010